Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Level 3 Communications LLC's Petition for	)	
Forbearance Under 47 U.S.C. § 160(c) and Section 1.53	)	**WC Docket No. 03-266**
of the Commission's Rules from Enforcement of	)	
Section 251(g), Rule 51.701(b)(1), and Rule 69.5(b)	)	

REPLY COMMENTS OF MCI

WorldCom, Inc. d/b/a MCI ("MCI") hereby submits its reply comments on Level 3 Communications LLC's ("Level 3") *Petition for Forbearance Under 47 U.S.C. § 160(c) and Section 1.53 of the Commission's Rules from Enforcement of Section 251(g), Rule 51.701(b)(1), and Rule 69.5(b)* ("Petition") in the above-captioned proceeding.

I. INTRODUCTION

Most of the commenters join MCI in supporting Level 3's petition, which seeks merely to preserve the regulatory status quo[1] so that "enhanced" Internet services intersecting with the public switched telephone network ("PSTN") continue to be governed by existing local arrangements, such as PRI tariffs or reciprocal compensation agreements.[2] Only local exchange carriers ("LECs") take a different view, in an obvious effort to extend the reach of the access

---

[1] *See generally In re Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 F.C.C.R. 2631, ¶ 2 (1988) (enhanced service providers are "exempt from switched access charges") ("*ESP Exemption Order*").

[2] *See, e.g.*, Comments of AT&T Corp.; Comments of Broadwing Communications, LLC; Comments of USA Datanet Corporation; Comments of the COMPTEL/ASCENT Alliance. Several commenters also suggest that the issues raised in the Petition would be better addressed in the context of the Commission's *IP-enabled Services NPRM, In re IP-Enabled Services*, WC Docket No. 04-36 (FCC rel. March 10, 2004) ("*IP-enabled Services NPRM*"). *See, e.g.*, Comments of the People of the State of California and the California Public Utilities Commission; Joint Comments of the United States Department of Justice, the Federal Bureau of Investigation, and the United States Drug Enforcement Administration.

charge regime until the time comes when they are finally required to accept a more reasonable intercarrier compensation regime, which would not permit LECs to extract above-cost access charges from their competitors, while themselves incurring only the actual economic cost.[3]

Opponents of the Petition make a variety of unpersuasive arguments in favor of expanding the carrier access charge regime – even while conceding that it is broken and in need of major overhaul – to include IP-enabled services that utilize the PSTN to any degree.[4] First, they wrongly suggest that LECs currently are uncompensated or undercompensated for the cost of terminating VoIP calls on the PSTN. To the contrary, LECs receive more than adequate compensation for terminating VoIP traffic today over PRI circuits or interconnection trunks. Second, opponents of the Petition erroneously claim that IP-to-PSTN VoIP services have always been covered under the long-distance carrier access charge regime, and suggest that the Petition seeks to change Commission policy. In fact, the Petition merely asks the Commission to re-

[3] *See, e.g.*, Comments of BellSouth; Comments of the Verizon Telephone Companies; Comments of Sprint Corporation (claiming that carrier access charges apply today, but also indicating that this intercarrier compensation issue should be addressed in the *IP-enabled Services NPRM*, *infra*); Comments of the ICORE Companies; National Telecommunications Cooperative Association Initial Comments.

[4] Indeed, in their eagerness to obtain access charge revenue at any cost, the LECs at times take positions that are flatly inconsistent with positions taken in other proceedings where they are eager to claim that their own IP-based services are *not* subject to the rules that govern narrowband voice traffic. SBC, for example, argues in the Vonage proceeding that the "Commission should adopt a clear and broad federal framework designed to protect Internet-based services from common carrier-type regulation under the Communications Act," and, similarly, argues in its own forbearance petition that "IP platform services" should be exempt from all Title II common carrier regulations. Yet here it denigrates such distinctions as "regulatory arbitrage" designed only to secure "unfair competitive advantages," and claims that if adopted the very position it advocates in these other proceedings "pose a significant threat to affordable and universally available telecommunications services." *Compare* Comments of SBC Communications, Inc., WC Docket No. 03-211, at 2 (FCC filed Oct. 27, 2003); *with In re Petition of SBC Communications Inc. for Forbearance*, WC Docket No. 04-29 (FCC filed Feb. 5, 2004); *with* Opposition of SBC Communications, Inc., WC Docket No. 03-266, at 3-4.

confirm that its "hands off" approach to the Internet has since its inception always included all IP-based services. Third, certain opponents baldly misstate the Commission's "net protocol conversion" test for determining whether IP telephony services are "information services" under the Telecommunications Act of 1996 ("Act").[5] In fact, Level 3's service is a paradigmatic example of protocol conversion between IP networks and legacy PSTN networks, as reviewing courts have held in analyzing substantially similar network arrangements.[6] Finally, while generally acknowledging that the Commission's intercarrier compensation reform proceeding[7] likely will overhaul the existing access charge regime, opponents of the Petition nevertheless want VoIP services in the meantime to be forced into the current broken regime. MCI briefly responds to these four arguments below.

II. LECS RECEIVE REASONABLE COMPENSATION TODAY FOR VoIP CALLS THAT TERMINATE ON THE PSTN

Opponents of the Petition argue that the imposition of carrier access charges is necessary to "fairly" compensate them for their labors in passing VoIP traffic, implying that they are not fairly compensated today under existing PRI tariff rates or the reciprocal compensation regime. Indeed, Verizon goes so far to assert that "Level 3 and other VoIP providers should have to

---

5 Pub. L. No. 104-104, 110 Stat. 56 (Feb. 8, 1996), codified at 47 U.S.C. § 151 *et seq*.

6 *Vonage Holdings Corp. v. Minnesota Pub. Util. Comm'n*, Civ. No. 03-5287, slip op. at 11-12 (D. Minn. Oct. 16, 2003) ("*Vonage Decision*") (concluding that IP-to-PSTN VoIP service meets the FCC's "net protocol conversion" test).

7 *See In re Developing a Unified Intercarrier Compensation Regime*, 16 F.C.C.R. 9610 (2001) ("*Intercarrier Compensation NPRM*").

compensate Verizon and the other local exchange carriers for the use of the network," as if Verizon receives no compensation at all for VoIP traffic under the existing system.[8]

In fact, the LECs get properly paid, in accordance with established compensation rules governing the use of the local PSTN. Their issue is simply whether exorbitant access charges, or more reasonable interconnection rates, should apply. As to which regime is more "fair," in the recent *IP-enabled Service NPRM*, the Commission implicitly agreed with MCI in tentatively concluding that VoIP services passing between two carriers' switches over network interconnection trunks should be subject to the same compensation rules that apply to other traffic (i.e., local voice and dial-up ISP calls) that use those same circuits "in similar ways" today.[9] As described by Level 3 here, the passage of VoIP traffic between carriers does *not* involve feature group trunks connecting IXC Class 3 and LEC Class 5 switches, for which carrier access charges typically would apply. Rather, interconnection trunks between the carriers' Class 5 switches (or soft-switch equivalents) are used to pass VoIP traffic between the two carrier networks. If the exchanged calls were local or ISP dial-up traffic, then they unquestionably would be subject to the existing reciprocal compensation rules. Thus, since VoIP services use the LEC networks "in similar ways" as these other types of calls, there is no equitable basis for claiming that higher and different access charges should apply exclusively in

---

[8] Comments of the Verizon Companies at 3; *see also* Opposition of SBC Communications Inc. at 20-24 (arguing that reciprocal compensation rates for VoIP traffic, which would utilize local interconnection circuits, is "unjust and unreasonable," but PSTN-PSTN traffic over those same circuits is "just and reasonable"). To the extent that the LECs are really complaining about paying competitive carriers for passing PSTN-to-IP traffic that originates on the LEC networks, those complaints are not unique to VoIP services. They merely are echoes of the LECs' longstanding complaints about in-bound dial-up ISP traffic, complaints that have long-since been rejected by the Commission.

[9] *IP-enabled Services NPRM* ¶ 61.

the VoIP context, and certainly no basis for changing current practice, which is to permit such calls to be treated as "local" for intercarrier compensation purposes.

III. IP-PSTN TRAFFIC IS NOT SUBJECT TO CARRIER ACCESS CHARGES TODAY

The ILECs wrongly claim that IP-PSTN traffic is subject to access charges today. BellSouth, for instance, argues that the Petition "seeks to change the rules around access compensation."[10] Similarly, Verizon argues that VoIP services that intersect the PSTN "are subject to access charges under the Commission's existing rules."[11] These assertions are false.

The Commission first declared that ESPs are exempt from carrier access charges in 1983, when it determined that the imposition of "full carrier usage charges on enhanced service providers . . . who are currently paying local business exchange service rates for their interstate access" would be imprudent until the intercarrier compensation system could be rationally reformed.[12] This conclusion was reconfirmed in 1988 when the Commission issued its *ESP Exemption Order*, which continued "the exemption from interstate access charges currently permitted enhanced service providers."[13] Notwithstanding the LECs' protests to the contrary, the

---

[10] Comments of BellSouth at 1; *see also* Comments of the ICORE Companies at 5 (claiming that access charges apply to VoIP services today); Comments of the Alabama Mississippi Telecommunications Association et al. at 2 ("Level 3's service is subject to access charges today").

[11] Comments of the Verizon Telephone Companies at 6.

[12] *In re MTS and WATS Market Structure*, 97 F.C.C.2d 682, ¶ 83 (1983) ("*MTS/WATS Order*").

[13] *ESP Exemption Order* ¶ 1; *see also id.* ¶ 20 n.53 ("The current treatment of enhanced service providers for access charge purposes will continue. At present, enhanced service providers are treated as end users and thus may use local business lines for access for which they pay local business rates and subscriber line charges.").

Commission's favorable treatment for ESPs, which includes "enhanced" VoIP providers, continues to this day.[14]

Currently, in-bound VoIP calls (those that originate on the PSTN and terminated on an IP network) are treated the same as in-bound dialup ISP calls. In both cases, so long as the phone number of the called party (i.e., the IP service provider, whether linked to the VoIP terminal device or a modem bank, as applicable) is local to the calling party, then only local charges would apply to that call. And if the called and calling numbers are not local to each other, then the calling party would pay (as part of their toll charges) any applicable access charges required to reach the IP service provider (i.e., VoIP gateway or modem bank).

SBC wrongly claims that the ESP exemption is "a limited carve-out from the access charge rules specifically designed to kick start the ISP industry by allowing ISPs to connect their subscribers at reduced rates."[15] But this is an erroneous reading of the Commission's orders.[16] The Commission broadly addressed the context of all "enhanced service providers" in those orders, and no such limitation was ever expressed, directly or indirectly, in them. LEC claims that the exception is limited in this manner is made up out of thin air.[17]

---

[14] *See Vonage Decision*, slip op. at 19 (finding that "VoIP services necessarily are information services" under the Act and the Commission's long-standing policies regarding IP telephony).

[15] Comments of SBC Communications Inc. at 13.

[16] The supporting citation in SBC's comments, *id.* at 14 n.30, is to the *MTS/WATS Order*. That Order concerned "leaky PBXs" and applied broadly in the context of facilities-based carriers, resellers, . . . sharers, privately owned systems, enhanced service providers, and other private line and WATS customers. *See MTS/WATS Order* ¶ 78. SBC's suggestion that this paragraph is supportive of a grossly more limited view of the ESP exemption is utterly without merit.

[17] The ESP exemption was not limited to just "*originating* access charges for ESP-bound

IV. IP-PSTN VOIP TRAFFIC IS A PARADIGM EXAMPLE OF A "NET PROTOCOL CONVERSION"

Some opponents contend that, since there is "no change in the form or content of the information as sent and received,"[18] Level 3's VoIP services do not satisfy the Commission's "net protocol conversion" standard for categorizing "information services."[19] This too is a mistaken view of the Act and the Commission's rules.

In its 1998 Report to Congress (the *Stevens Report*), the FCC tentatively proposed that the transmission of customer information "without net change in form or content" be one of four factors for determining whether a given instance of IP telephony should be treated as an "information service" under the Act.[20] In the recent *IP-enabled Services NPRM,* the Commission found this factor to be "dispositive."[21] Here, the communication begins at the caller's premise in IP protocol (using a non-traditional CPE device), is converted to time-division-multiplexed ("TDM") voice protocol midstream at the service provider's VoIP gateway, and ends at the recipient's premise in TDM. This is a paradigmatic protocol conversion. The

---

traffic." *IP-enabled Services NPRM* ¶ 25 (emphasis added). Rather, it has applied generally over the years to all ESP services.

[18] *See, e.g.*, Comments of the Alabama Mississippi Telecommunications Association et al. at 12.

[19] *See IP-enabled Services NPRM* ¶ 30 (inquiring whether "net protocol conversion" should continue to be used as a dispositive factor for the regulatory classification of IP telephony).

[20] *In re Federal-State Joint Board on Universal Service*, 13 F.C.C.R. 11501, ¶ 88 (1998) ("*Stevens Report*"). The three other factors include whether the service: (1) holds itself out as providing voice telephony; (2) does not require the use of different customer premise equipment ("CPE") from that necessary to place an ordinary touch-tone call over the PSTN; and (3) allows the end user to call phone numbers assigned in accordance with the North American Numbering Plan.

[21] *IP-enabled Services NPRM* ¶ 44.

fact that the call starts and ends as a voice call is wholly besides the point: "voice" is not a protocol.

V. PENDING INTERCARRIER COMPENSATION REFORM, THE COMMISSION SHOULD NOT IMPOSE ACCESS CHARGES ON IP-PSTN VoIP TRAFFIC

Finally, while virtually all commenters support the Commission's efforts to reform the current irrational scheme of intercarrier compensation, LECs further suggest that Level 3's petition be denied on the theory that VoIP providers will obtain the relief sought in this Petition through the separate *Intercarrier Compensation NPRM*. BellSouth concedes, for example, that Level 3 "will achieve the relief it seeks in the Commission's separate intercarrier compensation proceeding."[22] But since they acknowledge that a more "fair and uniform intercarrier compensation mechanism for all carriers" is needed, it is difficult to understand the LECs further argument that in the interim that VoIP providers be added to the ranks of communications providers that suffer under the existing "asymmetrical, discriminatory access charge mechanism."[23] To the contrary, since it is universally acknowledged that the current intercarrier compensation system is deeply flawed, it would be grossly irrational to extend that system to intercarrier relationships that heretofore have been exempted from it.

VI. CONCLUSION

For the reasons stated herein, in MCI's initial comments, and in the majority of other comments filed in this proceeding, the Commission should grant Level 3's Petition. The

[22] Comments of BellSouth at 17; *see also id.* 17-20 (arguing that Level 3 is seeking a "regulatory 'early bird special'").

[23] Comments of BellSouth at 19-20.

Commission should also promptly resolve the *Intercarrier Compensation NPRM*, which will more broadly address the defects of the current access charge regime.

Respectfully submitted,

WORLDCOM, INC. d/b/a MCI

/s/ Henry G. Hultquist

Henry G. Hultquist
Kecia B. Lewis
Richard S. Whitt
1133 19th Street, N.W.
Washington, D.C. 20036
(202) 736-6485

Mark D. Schneider
Ian T. Graham
JENNER & BLOCK LLP
601 13th Street, N.W.
Washington, D.C. 20005
(202) 639-6005

Attorneys for MCI

March 31, 2004